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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

JOHN THOMPSON,
Plaintiff and Respondent,
v.
DEBORAH MEDEIROS,
Defendant and Appellant.

A121964, A121965, A122491
(San Mateo County
Super. Ct. Nos. 117375, 117376)

Deborah Medeiros appeals from orders granting three “safe-harbor” petitions under Probate Code section 21320¹ filed by her brother, respondent John Thompson. By his safe-harbor petitions, Thompson sought a declaration that a proposed petition to remove and surcharge Medeiros as cotrustee of certain family trusts will not violate the no contest provisions in the trusts or in their mother’s will. We shall affirm.

Factual and Procedural History

On February 15, 2008, Thompson filed two safe-harbor petitions, each involving a different family trust, seeking determinations that the petition he proposed to file would not violate the no contest provisions of the trusts. The no contest provision in the first trust provides, “In the event any beneficiary under this trust, shall singly or in conjunction with any other person or persons, contest in any court the validity of this trust or of a deceased trustor’s last will or shall seek to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that such will or any of its provisions is

¹ All statutory references are to the Probate Code unless otherwise noted.

void, or seek otherwise to void, nullify, or set aside this trust or any of its provisions, then the right of that person to take any interest given to him by this trust shall be determined as it would have been determined had the person predeceased the execution of this declaration of trust without surviving issue.” The second trust provides: “In the event any beneficiary of this trust, singularly or in conjunction with any other person or persons, contests or in any manner attempts to defeat the validity of this trust . . . , or the last will of the trustor or of any exercise by the trustor of any general or limited power of appointment retained by or granted to the trustor, or undertake any legal proceedings that is designed to thwart the trustor’s wishes as expressed in any such trust, in the trustor’s will or in the exercise of any such power of appointment . . . , or seeks to otherwise void, nullify, or set aside any such trust . . . , then the right of that person to take any interest given to him or her by this trust shall be void and this trust shall be administered as if that person had died without surviving issue before the trustor.”

The proposed petition seeks to remove and surcharge Medeiros as cotrustee for the trusts based on her alleged breach of the trusts and breach of her fiduciary duties. The proposed petition alleges in relevant part as follows: “Within the last year, John Thompson discovered that Deborah Medeiros was hiding over \$900,000 in trust assets from him and since May 2004, Deborah Medeiros has distributed to herself trust assets the value of which exceed her distributive share by over \$4,000,000 and has kept the issues, rents and profits therefrom.” Thompson alleges that for the past three years he has attempted to negotiate a distribution of the trust assets but that Medeiros has refused to turn over trust financial documents. Finally, he alleges that Medeiros “has paid family members with trust assets, used trust assets for personal expenses, paid her personal attorneys’ fees with trust assets, and refused [him] access to real property owned by the trusts at a resort in Truckee, California and a hunt club in Colusa, California.” Thompson’s proposed petition acknowledges that “[o]ther than two specific gifts, [he and his sister] are the equal beneficiaries” of the relevant trusts.

Medeiros opposed each of Thompson’s safe-harbor petitions on the ground that his “proposed petition is *not* what it claims to be” and that his petition actually “*seeks*

more than he is entitled to under the terms of the trust[s] in order to make up for perceived inequalities in the past.” She argued that Thompson’s claim that she received \$4 million too much was really a claim that he should get more than his coequal share to offset benefits she allegedly received prior to their mother’s death, including her home in Woodside. Thus, she argued, his proposed petition is a challenge to the terms of the trusts in violation of the no contest provisions. Recognizing that “none of this is apparent from the face of the proposed petition,” she argued that the petition should be denied outright on the ground that it is too vague. Alternatively, she argued that she is entitled to conduct discovery and an opportunity to demonstrate at an evidentiary hearing that the “proposed petition masks an attempt to thwart the terms of the trust by seeking to deprive [her] of her full share of the estate.”

On April 28, 2008, the probate court granted Thompson’s safe-harbor petitions. Medeiros filed a timely notice of appeal with respect to both petitions.

In the meantime, on June 2, 2008, Thompson filed a third safe-harbor petition seeking a determination that the same proposed petition would not violate the no contest provision of his mother’s will. The will provides, “If any person or persons directly or indirectly contests or in any manner attempts to break or defeat this will or any of its provisions, or to have this will declared invalid in whole or in part, or undertakes any legal proceeding that is designed to thwart my wishes as expressed in this will, such person or persons shall receive no part of my estate” On July 7, 2008, the probate court granted the third safe-harbor petition over Medeiros’s objections. Medeiros filed a timely notice of appeal and, at Medeiros’s request, the appeals were consolidated for all purposes.

Discussion

Medeiros contends Thompson’s section 21320 petitions for declaratory relief were erroneously granted. We review the orders granting Thompson’s petitions de novo. (*Estate of Davies* (2005) 127 Cal.App.4th 1164, 1173.)

A no contest clause requires a beneficiary to acquiesce to the terms of a trust or will as a condition to receiving its benefits, and disinherits any beneficiary who

challenges the instrument. (*Burch v. George* (1994) 7 Cal.4th 246, 254-255, 265.) A contest is defined as “any action identified in a ‘no contest clause’ as a violation of the clause,” and includes “a pleading in a proceeding in any court alleging the invalidity of an instrument or one or more of its terms.” (§ 21300, subds. (a), (b)(2).)

Under soon-to-be-repealed section 21320, subdivision (a), “[i]f an instrument containing a no contest clause is or has become irrevocable, a beneficiary may apply to the court for a determination of whether a particular motion, petition, or other act by the beneficiary . . . would be a contest within the terms of the no contest clause.” “[S]ection 21320 provides a safe harbor for beneficiaries who seek a judicial determination whether a proposed legal challenge would be a contest, and that is the only issue to be decided when such an application is made. [Citation.] As a general rule, the decision about whether the beneficiary’s proposed action would be a will contest may not involve a determination of the merits of the action itself, a rule that ‘makes sense’ because the summary safe-harbor procedure could otherwise ‘be used to allow the very form of challenge and protracted litigation the testator sought to prevent.’ ” (*Estate of Davies*, *supra*, 127 Cal.App.4th at p. 1173.)

Initially, Medeiros argued that the safe-harbor petitions should have been denied because the court could not determine from the allegations of the proposed petition the nature of the proposed action. While “specificity is important because the trial court must be able to determine from the section 21320 application whether the proposed action is entitled to safe harbor” (*Estate of Rossi* (2006) 138 Cal.App.4th 1325, 1334), the allegations of Thompson’s petition are sufficient to allow the necessary determination. The proposed petition seeks to remove Medeiros as cotrustee based on allegations that she misappropriated trust assets in breach of the trust agreements and her fiduciary duties. Under section 21305, subdivision (b)(6) and (7), actions “challenging the exercise of a fiduciary power” or regarding “the removal of a fiduciary” do not violate a no contest clause as a matter of public policy. On its face, the proposed petition purports to challenge the manner in which Medeiros has administered the trust as trustee, not the terms of the trust itself. The trial court correctly determined that the allegations in the

proposed petition do not constitute contests within meaning of the relevant no contest clauses.

Medeiros's primary argument on appeal is that she was entitled to conduct discovery and present evidence at a contested hearing in order to demonstrate that Thompson was concealing his true intentions. Medeiros relies on section 1000, which provides that "[e]xcept to the extent that this code provides applicable rules, the rules of practice applicable to civil actions, including discovery proceedings . . . apply to, and constitute the rules of practice in, proceedings under this code" and section 1046, which provides that in a contested probate proceeding "[t]he court shall hear and determine any matter at issue and any response or objection presented, consider the evidence presented, and make appropriate orders." However, section 21320, subdivision (c) expressly provides for a summary procedure by prohibiting the court from making a "determination of the merits of the motion, petition, or other act by the beneficiary" Imposing a right to discovery and an evidentiary hearing for the purpose of disclosing the petitioner's allegedly secret intent in filing a petition would be entirely inconsistent with the summary nature of the proceedings.

Relying on *Burch v. George*, *supra*, 7 Cal.4th 246, Medeiros argues that extrinsic evidence is admissible to construe the meaning of a proposed petition. In that case, however, the court held only that "[e]vidence of the circumstances surrounding the execution of the trust instrument is properly admissible to ascertain its meaning and intent." (*Id.* at p. 258, fn. 8.) The court did not consider whether extrinsic evidence is admissible to reveal a hidden intent underlying a beneficiary's proposed petition. Medeiros has not cited, nor have we located, any authority for the proposition that such evidence is admissible in a proceeding under section 21320.

Finally, we note that effective January 1, 2010, section 21320 and many related provisions (sections 21300-21308, 21321 and 21322) will be repealed. (4 West's Cal. Legis. Service (2008) ch. 174, § 1, p. 483.) A revised statutory scheme will apply to instruments that became irrevocable on or after January 1, 2001 and the common law will remain applicable to instruments that became irrevocable before that date. (4 West's Cal.

Legis. Service, *supra*, ch. 174, § 2, p. 484, adding §§ 21313, 21315, subd. (b).) Under the revised law, a challenge will not be considered a contest, regardless of the language of the instrument, unless it is “(1) A direct contest that is brought without probable cause. [¶] (2) A pleading to challenge a transfer of property on the grounds that it was not the transferor’s property at the time of the transfer. . . . [¶] (3) The filing of a creditor’s claim or prosecution of an action based on it.” (4 West’s Cal. Legis. Service, *supra*, ch. 174, § 2, p. 484, adding § 21311, subd. (a)) A “ ‘Direct Contest’ means a contest that alleges the invalidity of a protected instrument or one or more of its terms, based on one or more of the following grounds: [¶] (1) Forgery. [¶] (2) Lack of due execution. [¶] (3) Lack of capacity. [¶] (4) Menace, duress, fraud, or undue influence. [¶] (5) Revocation of a will pursuant to Section 6120, revocation of a trust pursuant to Section 15401, or revocation of an instrument other than a will or trust pursuant to the procedure for revocation that is provided by statute or by the instrument. [¶] (6) Disqualification of a beneficiary under Section 6112 or 21350.” (4 West’s Cal. Legis. Service, *supra*, ch. 174, § 2, pp. 483-484, adding § 21310, subd. (b).) “For the purposes of this section, probable cause exists if, at the time of filing a contest, the facts known to the contestant would cause a reasonable person to believe that there is a reasonable likelihood that the requested relief will be granted after an opportunity for further investigation or discovery.” (4 West’s Cal. Legis. Service, *supra*, ch. 174, § 2, p. 484, adding § 21311, subd. (b).)

In *Giammarrusco v. Simon* (2009) 171 Cal.App.4th 1586, 1615, the court offered the following explanation for these changes: “The current statutory scheme governing no contest clauses has been criticized as too complex given its numerous statutory and common law exceptions, creating uncertainty as to the scope and application of such clauses. [Citation.] ‘ “That uncertainty leads to widespread use of declaratory relief to construe the application of no contest clauses, adding an additional layer of litigation that does nothing to resolve the substance of any underlying issues.” ’ ” The Legislature’s wholesale revision of the pertinent statutes was intended in part to resolve this problem. (*Ibid.*; see also Cain, *Chapter 174: Devising a New Statutory Scheme for California’s No Contest Clauses* (2009) 40 McGeorge L.Rev. 556, 560-561 [by eliminating the pre-

contest declaratory relief provision, chapter 174 “aims to significantly reduce litigation related to declaratory relief and associated costs”].) Our conclusion that Medeiros is not entitled to conduct discovery in this proceeding is consistent with the aims of the Legislature in adopting this new statutory scheme.²

Disposition

The orders granting Thompson’s safe-harbor petitions are affirmed. Thompson is to recover his costs on appeal.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.

² As noted above, as of January 1, 2010, a no contest clause will no longer be enforceable against challenges formerly classified as “indirect.” (Legis. Analyst, analysis of Sen. Bill No. 1264 (2007-2008 Reg. Sess.) [“Under existing law, a contest means any action identified in a no contest clause as a violation of the clause and includes, in an open-ended manner, both direct and indirect contests. This bill, by contrast, is very specific, and narrow, about what is included under the no contest clause.”] Section 21300, subdivision (c), defined an “indirect contest” as meaning “a pleading in a proceeding in any court that indirectly challenges the validity of an instrument or one or more of its terms based on any other ground not contained in subdivision (b), and that does not contain any of those grounds.” Thompson’s proposed petition, as interpreted by Medeiros, presents at most an indirect challenge. Thus, as of January 1, 2010, irrespective of the outcome of this appeal, Thompson will be free to file his petition without fear of triggering the relevant no contest clauses.